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COLORADO RIVER COMMISSION
OF NEVADA

August 9, 2004

Ms. Jean Gray
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Re: Comments on July 16, 2004, version of proposed Section 12

Dear Jean:

Thank you for giving us an opportunity to comment on the language of proposed Section 12, entitled "Review and Adjustment of Federal Power Allocation," as most recently revised by Western. We are pleased to see that many of the customers' earlier comments have been considered and are incorporated in the latest revision. These changes, particularly the restoration in subsection 12.2 of the link between changes in the Contractor's status and resulting changes in the beneficiaries of the preference allocation, go a long way to making Section 12 understandable, workable and acceptable. We commend you and your colleagues, Jean, for your efforts to strike that necessary balance we spoke of earlier between Western's need for flexibility in these matters and the customers' need for contractual certainty and repose. The limited comments we now offer with regard to some of the procedural elements of Section 12 should not in any way disturb the substantial progress we have made thus far.

Because the procedure for notice and response in subsection 12.3 is triggered by the Contractor's own notice of anticipated changes, there is in practical effect an opportunity for dialogue and coordination with Western on the proposed change *before* the Administrator forms an intention to take action. That is as it should be. Our concern arises where Western's Administrator on his or her own initiative or on information from a third party begins an investigation into some alleged action or change in status related to a Contractor. Under subsection 12.4, the Contractor may not know of this investigation until it is presented with the notification of the Administrator's intended action. At that point, the Contractor may have only 30 days to come up to speed on the problem and prepare a defense, which we believe is what the "request for reconsideration" will likely involve. For public agencies like the CRC, 30 days is hardly enough time to find and contract for the technical assistance that may be necessary for that defense.

We urge that subsection 12.4 provide that where the Administrator undertakes an investigation of a Contractor pursuant to subsection 12.1, or pursuant to subsection 12.2 in the absence of a notice from the Contractor provided under subsection 12.3, the Administrator must notify the Contractor of the investigation and offer the Contractor a reasonable opportunity to provide comments and other information on the matter. We believe this procedure could save time and expense on all sides by promoting early understanding and solution *before* the Administrator commits to some course of action. In cases where the Administrator nonetheless determines to take action, the Contractor should have at least 120 days to respond to the notice. The potential severity of the intended action and the need to prepare an adequate defense in a matter that may be complex and where the stakes are high justifies the longer time for response.

Thank you once again, Jean, for so fully involving us in the preparation of the Parker-Davis Project Contract Extension Amendment.

Sincerely,



George M. Caan
Executive Director

GMC/GAL

Cc: Tyler Carlson
Michael HacsKaylo
FES Contractors (by E-mail)